

ILLINOIS POLLUTION CONTROL BOARD  
July 22, 1976

ENVIRONMENTAL PROTECTION AGENCY,        )  
  )  
                                  Complainant,        )  
  )  
                                  v.                        )        PCB 75-203  
  )  
HARRY VON ABEL and ALEXANDER W.        )  
HUTCHINGS, d/b/a COAL CONVERSION,     )  
LTD.                                        )  
  )  
                                  Respondents.        )

Fredric Benson, Assistant Attorney General, appeared for complainant.  
Mr. William Wilson appeared for respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

The Illinois Environmental Protection Agency (Agency) filed a complaint on May 14, 1975 against Harry Von Abel and Alexander W. Hutchings, d/b/a Coal Conversion Ltd. The Agency alleged that Respondents operated a facility to recover coal from a mine refuse area as defined by Rule 103 of the Regulations on Mine Related Pollution (Mine Rules) without a permit in violation of Rule 201 of the Regulations and Section 12(b) of the Environmental Protection Act (Act). On June 5, 1974 the Agency filed a Request for Admission of Facts. These facts included that Respondents had operated their mine facilities since December 10, 1974 without a permit and that the Agency had notified them of the need for a permit on six different occasions. A hearing was held on August 7, 1975. Respondents failed to answer the Request for Admissions. Under Board Procedural Rule 314 failure to respond is deemed an affirmative admission of the facts. In an Interim Order on October 9, 1975 the Board found basis for finding the alleged violation but also found inadequate information concerning the factors required by Section 33(c) of the Environmental Protection Act (Act). The case was remanded for another hearing concerning the Section 33(c) factors.

On January 19, 1976 the Agency filed an amended complaint. This complaint stated the allegations of the original complaint as Count I but limited the time of operating without a permit from December 12, 1974 to August 10, 1975. Respondents were issued a permit on August 11, 1975. Count II of the amended complaint alleges that Respondents operated their mine

so as to cause or allow the discharge of contaminants into the environment in violation of Section 12(a) of the Act; that Respondents have violated Standard Condition 2 of their mining permit in violation of Section 12(b) of the Act; that Respondents have discharged effluent in violation of Rules 203(a), 203(b) and 203(f) of the Chapter 3: Water Pollution Regulations and Condition 10 of their mining permit and Sections 12(a) and 12(b) of the Act; and that Respondents operated their mine facility so as to cause the discharge of effluents into the environment so as to cause violations of 203(a), 203(b) and 203(f) of the Water Rules, Rules 605(a), 605(b) and 606(a) of the Mine Rules and Section 12(a) of the Act. Count III alleges that Respondents have abandoned the mine in violation of Rule 501(a)(1) of Mine Rules by failing to notify the Agency within 30 days of cessation of mining.

The second hearing in this matter was held April 21, 1976. The Agency presented testimony concerning Counts II and III. Harry Von Abel testified for Respondents.

The Board finds that the previously mentioned admissions, being deemed admitted are sufficient to find Respondents in violation of Mine Rule 201 and Section 12(b) of the Act for conducting a mining operation without an appropriate permit having been issued by the Agency from December 10, 1974 to May 10, 1975.

The permit was issued to Coal Conversion Ltd. on August 11, 1975. The permit is for a mine refuse area site at the South half of Section 20 and the North half of Section 29 in Township 7 South, Range 1 West of the Third Principal Meridian in Jackson County, Illinois. The conditions of the permit (Comp. Ex.3) require a three feet wide bottom ditch around the entire perimeter of the mining works which was to be diverted to the holding or settling pond. The ditch was to be dug with 2:1 side slopes dug to a depth six to twelve inches below the carbon deposits into the original clay (Comp. Ex.3). Although the Respondents attempted to dig a ditch they did not comply with the permit conditions (Comp. Ex.4, R. 67-70). The ditch was dug with vertical sides (R.67). The sides have sloughed off. Coal refuse has eroded into the ditch, filling the ditch to within approximately six or twelve inches to the top (R.67). The permit conditions also call for a settling pond, designed for 2.29 acre-feet of water and a three-foot operating depth (Comp. Ex. 3, p.5). The lagoon was to handle a four inch rainfall per day runoff and

allow twenty-four hour detention (Comp. Ex. 3, p. 5). The lagoon was to be baffled to prevent short circuiting (Comp. Ex. 3, p. 5). Mr. Gates, the Agency inspector and witness, testified that there was no lagoon constructed as required by the permit (R. 64, 248). Mr. Abel insisted a lagoon had been built in the northeasterly quarter of the refuse area that is dug down to the clay (R. 216). According to the permit a sedimentation pond with limer was to be built in the northeast one quarter of the mine refuse area (Comp. Ex. 3, p. 8). In this section of the area Mr. Gates states he saw no lagoon as described in the permit; he has observed a pond in the coal fines (R. 249). This pond is not constructed according to the permit and is built so that water collecting in the pond could percolate out and into the stream (R. 249, Comp. Ex. 18).

The Agency did present evidence of samples of water taken from sites in the mine refuse area and downstream from the mine. Drainage from the mine runs into an unnamed tributary of Little Muddy River; the Little Muddy flows into the Big Muddy and finally to the Mississippi. A sample taken upstream from the mine refuse area on April 3, 1975 showed the stream was in compliance with all the water quality standards of Rule 203(f) of the Chapter 3: Water Pollution Regulations with the exception of iron (Comp. Ex. 1-A). The standard for iron is 1.0 mg/l and the upstream sample was 2.0 mg/l (Comp. Ex. 1-A). Samples taken from the refuse site and downstream on April 3, 1975 show varying violations of the iron, manganese, and total suspended solids standards of Rule 203(f) of the Chapter 3: Water Pollution Regulations (Water Rules) and all samples showed violations of the range of pH allowable under Rule 203(b) of the Water Rules, total acidity was always beyond total alkalinity (Comp. Exs. 1, 2). Upstream from the refuse area the water is more alkaline than acid (Comp. Ex. 1-A). The iron violation was as high as 5.8 mg/l and 11.0 mg/l on two different samples (Comp. Ex. 1-B, 2-B). Mr. Gates testified that there were coal fines and rusty iron deposits on the coal fines in several sampling areas (R. 103, 118, 120, 121). These deposits are violations of Rule 203(a) of the Water Rules and 605(b) of the Mine Rules. Rule 605(a) of the Mine Rules provides that ". . . no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard." These aforementioned violations of the Chapter 3: Water Rules therefore constitutes a violation of Rule 605(a) of the Mine Rules.

Mr. Abel presented evidence in an attempt to show water other than that of his mine refuse area contributed to the pollution of the unnamed tributary. The evidence presented did not show any other water that flowed into the stream violated the water standards of the State of Illinois or contributed to the pollution of the stream. Mr. Gates testified he saw drainage coming directly from the gob pile entering the stream (R. 250). This would indicate that the Respondent's mine refuse area is the main contributor to the pollution of this tributary. The Board does find that Respondent is in violation of all the allegations of Count II; Rules 203(a), 203(b), 203(f) of the Water Rules, Rules 605(a) and 605(b) of the Mine Rules and Sections 12(a) and 12(b) of the Act.

In Count III the Agency alleges a violation of Rule 501(a) of the Mine Rules by Respondents' failure to notify the Agency within thirty days of cessation of mining. The Board finds the inconsistency of the pleadings prevent the finding of a violation of this regulation. The complaint and the evidence are conflicting. The Agency alleges that on five given dates the mine appeared abandoned; however, these same five days are listed as days of operation in Count II. The evidence on this point is also inconclusive. Mr. Gates said at one point he had not seen any recent work at the site; however, he could not remember for certain what days trucks were there and men working and what days there were not (R. 124, 146). Mr. Abel testified he goes back three times a week to "open up the trench." It is obvious that at some point in time the refuse area was abandoned, but the proof as to that point in time is lacking. Count III is dismissed. This does not relieve Respondent of the responsibility of complying with the Mine Regulations, specifically Rules 501 and 502 dealing with notice and permits. Before final determination of a remedy in this case the Board must consider the factors enumerated in Section 33(c) of the Act. This case was specifically remanded for hearing on these matters. The Agency filed a Request for Interrogatories concerning these factors on November 18, 1975. Respondent made no answer to the interrogatories. This precluded Respondents from presenting ameliorating factors at the hearing. The Board will consider the facts it has in light of Section 33(c). The injury in this case is obvious. The water upstream is for the most part clean and a viable water source for plant and animal life; downstream the water violates many of the State's Water Standards.

This not only disrupts the natural balance for plants and animals but may ruin the water as it flows into larger streams for human use.

The potential good of Respondents' operation when handled in a manner that prevents pollution is great. Removing an unsightly refuse pile is a worthwhile project. However, to do so in a manner such as Respondent is of no social value. The eye sore has not been removed and the condition of the area has deteriorated.

The site in question has existed since 1929 (R. 201). Although Respondent had no control over the location of the refuse pile originally, the site is certainly unsuitable for any addition to an already existing problem.

The Agency witness indicated that following the permit conditions would eliminate the pollution problem (R. 251). Mr. Abel has indicated that this has not been a profitable venture. He lists assets of \$400 and liabilities of \$20,000 (R. 225). Some of the property has been sold with the proceeds going into building the ditch around the perimeter (R. 234, 236). Mr. Abel buys and sells coal (R. 232). Buying and selling coal does not necessarily give one the expertise to run a mining operation. Mr. Abel is a partner with Mr. Hutchings (R. 229). There is nothing in the record to show that the assets of this partnership are insufficient to remedy the problem Respondents have caused. The Board finds that Respondents must cease and desist any further violation of the Regulations or the Act. The Board finds a penalty of \$2,000 is necessary to aid in the enforcement of the Act.

This Opinion constitutes the Board's findings of fact and conclusions of law.

#### ORDER

It is the Order of the Pollution Control Board that:

1. Respondents have violated Mine Rule 201 and Section 12(b) of the Act, Rules 203(a), 203(b), 203(f) of the Chapter 3: Water Pollution Regulations, Rules 605(a) and 605(b) of the Mine Rules and Sections 12(a) and 12(b) of the Act. The allegation of violation of Rule 501(a) of the Mine Rules is dismissed.


2. Respondents shall cease and desist all future violations of the Act. Respondents shall bring their mine into compliance with all permit conditions and Regulations.
3. Respondents, Harry Von Abel and Alexander W. Hutchings, d/b/a Coal Conversion Ltd., shall jointly and severally pay a fine of \$2,000. Payment shall be by certified check or money order payable to:

State of Illinois  
Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

Payment shall be within 35 days.

Mr. James Young abstained.

I Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above opinion and Order were adopted on the 22<sup>nd</sup> day of July, 1976 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board